a temporary character. Since the building in question had been erected fifty years ago and is still habitable, I cannot uphold the appellant's contention that the building was temporary in character or that the title of the building was separable from the land. The other point as regards the meaning of "premises comprised in a tenancy" was not raised before the board nor was it strenuously argued before me in this appeal. In view of the relationship between respondent (2) and (1) in the original action and the respondent and the decision of Rigby J. in *Veerapillai* v. *Ooi Swee Hoe* (4) I also cannot uphold the contention that the premises were not comprised in a tenancy.

The other point that the landlord should have applied under section 12(1)(l) of the Ordinance has no relevance. The board's function when an application is made under section 12(1)(m) is limited to a consideration whether the conditions under that section have been satisfied before it makes an order. In this respect the board has rightly come to the conclusion that these conditions have been satisfied.

The appeal will, therefore, be dismissed with costs.

Appeal dismissed.

Solicitors: *S. Y. Chan & Co.; Richard Talalla & Menon.*

LING HAN LIANG v. LING MING SIENG

[O.C.J. (Lee Hun Hoe J.) November 22, 1965]

[Sibu — Matrimonial Cause No. 15 of 1965]

Husband and Wife — Restitution of conjugal rights — Grounds for refusal — Adultery — Failure to maintain.

The parties were married according to Foochow Custom. The husband-petitioner alleged that the respondent left the matrimonial home without reasonable cause and he prayed for a decree of restitution of conjugal rights. The wife in her defence alleged that the husband had committed adultery and had failed to maintain herself and her children.

Held: the evidence showed that the petitioner had committed adultery and had failed to provide his wife with proper maintenance and therefore the petitioner had failed to discharge the onus of establishing that the wife had deserted him without reasonable excuse.

Cases referred to:—

(1) *Mann* v. *Mann* [1922] P. 238.

(2) *Harnett* v. *Harnett* [1924] P. 41.

(3) *Wells* v. *Wells* [1954] 1 W.L.R. 1391.

(4) *Scott* v. *Scott* 4 Sw. & Tr. 114.

(5) *Russell* v. *Russell* [1895] P. 315.

(6) *Wee Hock Guan* v. *Chia Chit Neo & Anor.* [1964] M.L.J. 217.

MATRIMONIAL CAUSE.

C. T. Wong for the petitioner.

Respondent in person.

Lee Hun Hoe J.: The parties were married according to Foochow custom on 19th August, 1959. After the marriage they lived and cohabited at various places and in particular at 4½ Mile, Repok Road, Sarikei. They have two daughters. Petitioner alleged that respondent left the matrimonial home with their two daughters sometime in February 1963 without reasonable cause. He therefore prayed for a decree of restitution of conjugal rights.

Petitioner is the youngest of five sons of Ling Hung Choon (P.W.4). Petitioner and his family lived with P.W.4. He operated a taxi speedboat normally plying between Sarikei and Sibu and had to spend a considerable number of nights from home. He said he returned home between 10 to 20 nights in a month. Respondent did not agree. She stated that he used to return home once a week previously. Then he began to come home once or twice a month until February 1963 when he did not return home at all. She suspected that he had kept a mistress. She complained that from February to May 1963 petitioner did not give her any money. She admitted that her father-in-law did look after her and the children. Eventually she took the children to live with her mother at Sungei Gurugu, Sarikei. Since then approaches were made by the area headman Wong Kung Tuang (P.W.2) to persuade respondent to return home but she refused.

Some time in February 1964 she took out a summons against petitioner in the district court, Sarikei for maintenance. Later, on her application, another magistrate found great difficulty in enforcing the rather vague order of the trial magistrate. Eventually petitioner appealed to this court and succeeded in getting the order set aside on ground of irregularity.

One night in February 1965 at about 8 p.m. respondent with her brother Ling Beng Aik (D.W.3) and Isa (D.W.2) went to Haji Bujang's house. There they found petitioner and a woman named Ting Pek Hung in a room adjoining another room occupied by Cheung Swee Leong (P.W.5) and his family. Respondent questioned the petitioner who admitted that he was living there with Ting Pek Hung whom he also regarded as his wife. Ting Pek Hung also let it be known that petitioner was her husband and that she had two children by him. A quarrel ensued and a fight nearly took place had it not been prevented by those present including P.W.5 who had returned shortly after respondent arrived at the house.

P.W.5 said that the rooms were rented by him and that Ting Pek Hung was employed by him for a month during his wife's confinement. He said petitioner used to visit him quite often

but did not know the true relationship between petitioner and Ting Pek Hung. I am not impressed by P.W.5 as a witness. I do not believe that he did not know what was going on between petitioner and Ting Pek Hung who occupied room next to his. P.W.5 was not telling the court all that he knew and apparently trying his best to cover up for petitioner.

Isa (D.W.2) and Ling Beng Aik (D.W.3) corroborated substantially respondent's evidence. D.W.2 does not impress me as sincere as D.W.3 who appears to me to be more truthful and honest. Where their evidence conflict I prefer that of D.W.3. D.W.3 runs a coffee shop where respondent, her sister, used to stay whenever she came up from Sungei Gurugu. It was in the shop that the area headman Wong Kung Tuang (P.W.2) used to see her. D.W.3 stated that Ting Pek Hung once worked in Chop Chong Tong Aik, Sarikei, selling petrol. He learned that petitioner was interested in Ting Pek Hung and that they had gone to live in Sibu but he did not believe the story. So at the request of respondent he went to Sibu on 2nd February, 1963 to investigate. In Sibu he went to the vicinity where petitioner and Ting Pek Hung were alleged to be staying together and he saw them peeping out of a window of the first floor of Chop Ban Lee Hiong. He returned to Sarikei and told respondent what he had seen and advised her to see the district officer, Sarikei. From what respondent had said it would appear that petitioner and respondent had seen the district officer and that petitioner denied keeping a mistress.

Several English authorities were referred to me. Though they offer some guidance we should approach them with some care. Here we have a marriage according to Foochow custom which permits a husband to have more than one wife provided the principal wife consents to his taking another wife. Respondent did not appear to have given that consent. Petitioner has to satisfy the court of his sincere desire to resume co-habitation: *Mann* v. *Mann.*[1] Even though the parties have no affection for each other the court may still grant a decree: *Harnett* v. *Harnett;*[2] *Wells* v. *Wells.*[3] That petitioner committed a matrimonial offence is one answer to a petitioner for restitution: *Scott* v. *Scott.*[4] A just cause which does not amount to a matrimonial offence may be a reason for refusing a decree for restitution: *Russell* v. *Russell.*[5] In *Wee Hock Guan* v. *Chia Chit Neo & Another*[6] it was held that an allegation of adultery must be proved beyond reasonable doubt and that the evidence must go beyond establishing suspicion and opportunity to commit adultery and must be such as to satisfy the court that from the nature of things adultery must have been committed.

If what respondent said about the incident at Haji Bujang's house is true then there can be little doubt that petitioner had committed adultery. Further if the respondent is to be believed then petitioner had also failed properly to provide her with maintenance. Between the petitioner and respondent I have no hesitation in accepting the evidence of the respondent who impressed me as an honest and truthful witness. When she was at fault she did not hesitate to admit her wrong. On the other hand petitioner was evasive and did not impress me as a witness of truth.

On the evidence I therefore hold that petitioner has failed to discharge the onus of establishing that respondent deserted him without reasonable cause. Accordingly I dismiss his petition with costs which I assess at $150.

Respondent has prayed for maintenance for herself and their two daughters. Petitioner gave me to understand that he had given her some $50 per month when they were staying with his father. He also gave me to understand that he also supported his father. But his first duty is to his wife and children. He owes his father a moral obligation but he owes his wife and children a legal obligation. I think it is not unreasonable to assess that petitioner could afford to pay $80 per month. This sum is calculated in the sense that $40 is for respondent and $20 each for the daughters. I therefore order petitioner to pay maintenance to respondent and their two daughters $80 per month with effect from 30th November, 1965 and thereafter $80 on the last working day of each subsequent month.

Most of the witnesses called by both parties gave me the impression that they would like to see the parties come together again. I myself would of course like to see the spouses living together in a happy state. I only hope that their relatives and friends and in particular the area headman Wong Kung Tuang would be able to bring about a reconciliation. In that event the parties are at liberty to apply regarding the maintenance order.

Order accordingly.

CHANG KOK SING & ANOR. v. KOO LAN

[F.C. (Thomson L.P., Ong Hock Thye Ag.C.J. (Malaya) MacIntyre J.) November 24, 1965]

[Ipoh — Federal Court Civil Appeal No. 66 of 1965]

Damages — Fatal accident — Loss of expectation of life — Conventional figure.

Negligence — Quantum of damages.

This was an appeal against the decision of the High Court in Ipoh awarding damages to the mother and administratrix of a 17 year old girl cyclist who was killed in an accident in a collision with a motor car at